

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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CIVIL ACTION NO. 04-10579 JLT

KRISTIN GABEL,

Plaintiff,

v.

RIVERVIEW SCHOOL, AUDRICK J. HAYES,
STEVEN GRINSELL, AND MAUREEN BRENNER,

Defendant.

U.S. DISTRICT COURT
DISTRICT OF MASS

JOINT MOTION TO FURTHER STAY PROCEEDINGS

All parties to this action move the Court to stay proceedings pending the conclusion of a criminal action brought by the Commonwealth against Defendant Hayes for the alleged rape of the Plaintiff in this civil action.

In support of their motion, the parties state as follows:

1. This is an action in negligence, negligent infliction of emotional distress, and breach of contract brought by a former student of Defendant Riverview School, Inc., in connection with allegations of sexual molestation.
2. The Court by Order entered on October 5, 2004, allowed a previous Joint Motion to Stay for ninety (90) days, in order to permit the parties to engage in informal discovery and a voluntary mediation. That mediation took place on December 23, 2004. Although that mediation did not result in a final resolution of the case, the parties remain hopeful that a settlement can be achieved. The parties did exchange numerous documents in advance of the mediation and have agreed, informally, to continue to do so.
3. In addition to ongoing efforts to continue settlement negotiations, a further stay of proceedings is warranted because of the pending criminal trial of Defendant Hayes.

4. Hayes was indicted by a Grand Jury sitting in Barnstable on June 24, 2003. The trial of those criminal allegations has not yet been scheduled due to discovery in the criminal proceedings.

5. Plaintiffs and the School Defendants (Riverview School, Inc., Maureen Brenner and Steven Grinsell) are adverse to Hayes in this civil action. Hayes has separate counsel, and Plaintiff does not wish to be subject to a deposition in advance of the criminal trial against Hayes. Similarly, counsel for Hayes in this action does not wish to subject Hayes to a deposition, wherein he will assert his Fifth Amendment privilege and refuse to answer questions.

6. All parties respectfully submit that the requested stay is appropriate in the circumstances of this case. The First Circuit recently set forth the factors that a trial court should take into consideration in deciding whether a civil proceeding should be stayed pending a parallel criminal investigation. In Microfinancial, Inc. v. Premier Holidays International, Inc., 385 F. 3d 72, 77-78 (1st Cir. 2004), the First Circuit listed the following relevant factors:

- (i.) the interests of the civil plaintiff in proceeding expeditiously with the civil litigation, including the avoidance of any prejudice to the plaintiff should a delay transpire;
- (ii.) the hardship to the defendant, including the burden placed upon him should the cases go forward in tandem;
- (iii.) the convenience of the civil and criminal courts;
- (iv.) the interests of third parties;
- (v.) the public interest;
- (vi.) the good faith or lack of good faith of the litigants; and
- (vii.) the status of the cases.

The above analysis strongly favors staying the proceedings until the outcome of the Hayes criminal trial. First, the civil Plaintiff assents to this motion. Second, Defendant Hayes will not be able to defend himself in this civil action without potentially waiving his

Constitutional privilege against self-incrimination. Third, the interest of the public and third parties and the courts are best served by the requested stay.

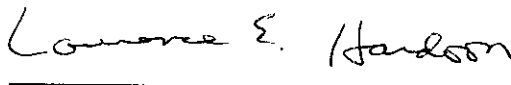
7. The parties continue to make good faith efforts at resolution of the case, and will continue informal discovery.

WHEREFORE, all parties respectfully request that the proposed Order be entered granting a stay until the conclusion of the criminal proceedings against Defendant Hayes.

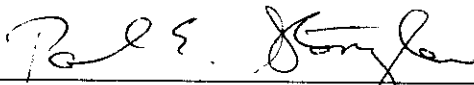
Respectfully submitted,

PLAINTIFF,
KRISTEN GABEL,
By Her Attorney,

DEFENDANTS,
RIVERVIEW SCHOOL, INC.,
STEVEN GRINSELL, MAUREEN
BRENNER,
By Their Attorney,

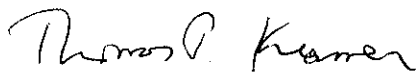


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Dated: February 3, 2005

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